[redacted] OF RECORD.

[redacted] UNITED STATES

[redacted]

[redacted] LITTER IN ERROR,

[redacted] OF CALIFORNIA.

[redacted] OF THE STATE OF CALIFORNIA.

[redacted] No. 1095.

[redacted] 385

SUPREME COURT OF THE UNITED STATES.

No. 402.

THE STEAMBOAT AMERICA, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the justice of the Supreme Court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, between the people of the State of California, plaintiffs, and the steamer America, defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at said Supreme Court of the United States, at Washington, D. C., on the first Monday of December next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid being inspected, the said U. S. Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-fourth day of January, A. D. 1868, and the independence of the United States the ninety-second.

[SEAL.] GEO. E. WHITNEY,
Clerk U. S. Circuit Court, District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
Chief Justice of the Supreme Court of the State of California.

Endorsed: United States. In the Supreme Court of the State of California. The people of the State of California vs. The Steamer "America." Writ of error. J. B. Manchester, att'y for pl'ff in error.

2 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the justices of the Supreme Court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court before you, between the people of the State of California, plaintiffs, and the steamer America, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly

corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at said Supreme Court of the United States, at Washington, D. C., on the first Monday of December next, in the said Supreme Court, to be there and then held. that the record and proceedings aforesaid being inspected, the said U. S. Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-fourth day of January, A. D. 1868, and of the independence of the United States, the ninety-second.

[SEAL.]

GEO. E. WHITNEY,
Clerk U. S. Circuit Court, District of California.

This writ of error is hereby allowed.

LORENZO SAWYER,
Chief Justice of the Supreme Court of the State of California.

Endorsed: United States. In the Supreme Court of the State of California. The people of the State of California vs. The Steamer "America." Writ of error. Copy of writ of error lodged in the clerk's office in pursuance of the statute in such case made and provided for the defendant's in error. J. B. Manchester, att'y for pl'ff in error. J. B. Manchester, att'y for pl'ff in error.

3 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER AMERICA.

Know all men by these presents, that we, I. W. Raymond, of the city of San Francisco, State of California, agent for the defendant above named as principal, and John W. Brumagim and Jacob H. Brumagim, as surities, are held and firmly bound unto the people of the State of California, plaintiffs in the above entitled action, in the sum of five thousand dollars to be paid to the said plaintiffs, their successors, administrators or assigns. To which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated San

4 Francisco, California, January 24th, 1868.

Whereas the defendant, The steamer "America," by its agent, I. W. Raymond, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in

the above entitled action by the Supreme Court of the State of California;

Now therefore, the condition of the obligation is such, that if the above-named defendant shall prosecute his said writ of error and effect, and answer all damages and costs, if he shall fail to make good his plea then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

I. W. RAYMOND.
J. W. BRUMAGIM.
J. H. BRUMAGIM.

Sealed and delivered in presence of—
B. F. M. BENSON.

5 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

John W. Brumagim and Jacob H. Brumagim, surities on the foregoing bond, being duly sworn, each for himself, depose and say that he is a resident of the State of California, and a freeholder in said State, and that he is worth the amount specified in said bond, over and above his just debts and liabilities, exclusive of property exempt from execution.

J. W. BRUMAGIM.
J. H. BRUMAGIM.

Sworn to before me this 24th day of January, 1868.
I. B. CROCKETT,
Associate Justice of Supreme Court of California.

Endorsed: Supreme Court of the State of California. The People of the State of California vs. The Steamer "America." Bond on writ of error. I hereby approve of the sufficiency of the surities in the foregoing bond, January 24th, 1869, I. B. Crockett, associate justice Supreme Court of Cal. Lorenzo Sawyer, chief justice of the Supreme Court of the State of California. J. B. Manchester, att'y for def't.

6 UNITED STATES OF AMERICA, *ss:*

To the People of the State of California, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the first Monday of December, A. D. 1868, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of California, wherein the steamer "America" is plaintiff, and you are defendant in error, to show cause if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, chief justice of the Supreme Court of the State of California, this twenty-fifth day of

January, A. D. 1868, and of the independence of the United States the ninety-second.

[SEAL.] LORENZO SAWYER,
Chief Justice of the Supreme Court of the State of California.

Due service of [of] the within citation acknowledged by service of copy thereof, together with this the original, Jan'y 25th, 1868.
Sacramento, Jan'y 25, 1868.

JO. HAMILTON,
Attorney General.

Endorsed: United States Supreme Court. The People of the State of California, df't in error, vs. The steamer "America," plaintiff in error. Citation. J. B. Manchester, att'y for pl'ff in error.

7 In the Supreme Court of the State of California.

In the District Court of the fourth judicial district in and for the city and county of San Francisco and State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER AMERICA. } No. 13026.

The people of the State of California, upon the relation of the board of State harbor commissioners, complain of the steamer America, defendant, and for cause of action allege:

That the said defendant is indebted to the said plaintiff for wharfage of the said defendant at the wharf of the plaintiffs, in the city of San Francisco and State of California, known as the Mission street wharf, within one year last past, in the sum of eighteen hun-
8 dred and eighty-six dollars and fifty cents, and interest, as hereinafter stated, payable in gold coin of the United States.

That the following are the items of the account:

From December 18th, 1865, to January 15th, 1866:

Four days, at $49	$196 00
Twenty-four days, at $24 50 per day	588 00

Interest from January 14th, 1866, to be added.

From February 15th, 1866, to February 22d, and from March 7th to March 15th, 1866:

Four days, at $49 per day	$196 00
Eleven days, at $24 50 per day	269 50

Interest from March 15th, 1866, to be added.

From April 23d, 1866, to May 15th, 1866:

Four days, at $49 per day	$196 00
Eighteen days, at $24 50 per day	441 00

Interest from May 15th, 1866, to be added.

That during the times and for the number of days above specified, the said defendant occupied a berth at said wharf. That the prices above charged are the usual and customary charges therefor, and were agreed to be paid by the said defendant; that no part of the same has been paid, but the whole is now due and owing from the defendant to the plaintiffs, and by law payable in gold coin.

Wherefore the said plaintiffs demand judgment against the said steamer America for said sum of $1,886 50, and interest on $784 from January 15th, 1866, and on $465 50 from March 15th,
9 1866, and on $637 from May 15th, 1866, such judgment to be payable in gold coin with costs.

EDWARD TOMPKINS,
Attorney for Plaintiffs.

Indorsed: Filed August 17th, 1866. Wm. Loewy, clerk, per Jas. E. Ashcom, D. C.

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

Consent for further time to plead.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
STEAMER AMERICA.

I hereby consent that the defendant have ten days from this date, to plead to the plaintiff's complaint filed herein.

Dated San Francisco, August 24th, 1866.

EDWARD TOMPKINS,
Plaintiff's Attorney.

Filed August 25th, 1866.

WM. LOEWY, *Clerk.*
Per L. J. LEE, *D. C.*

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

10 *Order for further time to plead.*

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER AMERICA.

On application of J. B. Manchester, esq., attorney for defendant, it is hereby ordered that said defendant have five days from this date to plead to the plaintiff's complaint filed herein.

Dated San Francisco, September 3d, 1866.

E. D. SAWYER,
District Judge.

Filed September 3d, 1866.

WM. LOEWY, *Clerk.*

Demurrer to complaint.

THE PEOPLE OE THE STATE OF CALIFORNIA
vs.
THE STEAMER AMERICA.

Now comes the defendant, by J. B. Manchester, his attorney, and demurs to the plaintiff's complaint filed herein, on the ground that upon the face thereof it appears:

First. That this court has no jurisdiction of the defendant or of the subject matter of the action in manner and form as the same is instituted.

11 1. Because said court is deprived of such jurisdiction by the Constitution and laws of the United States.

2. Because the statute law of the State of California, under which this action is brought, is unconstitutional.

3. Because the board of State harbor commissioners have no authority given them by law to institute actions in rem, in the name of the people of the State of California.

4. Because the people of the State of California are not the owners of, nor have they any right, title, or interest in the Mission street wharf, in the city of San Francisco.

Second. That said complaint does not state facts sufficient to constitute a cause of action against the defendant, or to render defendant liable to said plaintiffs in this form of proceeding.

1, Because there is no allegation in said complaint that the board of State harbor commissioners are empowered by law to institute actions of this kind.

2. Because it does not appear from the allegations of said complaint that the owners, masters, agents, or consignees of said defendants, or either of them, made any contract, either expressed or implied, to pay the wharfage claimed to be due, in said complaint, from said defendant to said plaintiffs.

3. Because it does not appear from the allegations of said complaint that the owners, master, agents, or consignees of said defendant, or either of them, agreed to pay the wharfage claimed to

12 be due from the defendant to the plaintiffs in said complaint.

4. Because it does not appear from said complaint that any demand was ever made for the payment of said wharfage by said board of State harbor commissioners, or the owners, master, agents, or consignees of said defendant, or either of them, before said action was brought.

Third. That said complaint is ambiguous, unintelligible and uncertain.

J. B. MANCHESTER,
Attorney for Defendant.

Dated San Francisco, September 8th, 1866.

Indorsed: Service of a copy of the within demurrer is hereby admitted. Edward Tompkins, plaintiffs' attorney. San Francisco, September 8th, 1866.

Filed September 8th, 1866.

WM. LOEWY, *Clerk*,
Per JAS. E. ASHCOM, *D. C.*

13 In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco, August term, Saturday, Sept. 29th, 1866.

PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
STEAMER AMERICA, defendant.

Present: Hon. E. D. Sawyer, judge.

The demurrer to the complaint herein having been duly considered, it is ordered that said demurrer be, and the same is, hereby overruled, with leave to defendant to answer in ten days.

I hereby certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said Fourth District Court in the above-entitled cause.

Attest my band and the seal of said District Court, this twenty-first day of December, A. D. 1866.

[L. S.]

WM. LOEWY, *Clerk*,
By L. J. LEE, *Deputy Clerk*.

In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco.

14 *Answer.*

PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
STEAMER AMERICA, defendant.

I. W. Raymond, agent of said steamer, by J. B. Manchester, attorney for defendant for answer to the complaint filed in said cause, denies that said defendant is indebted to the plaintiff for wharfage of said defendant at Mission street wharf, or at any other wharf, in the sum of eighteen hundred and eighty six 50-100 dollars, as alleged in said complaint, or in any other sum, or for any interest on said sum, or on any other sum whatever.

He further denies that at the times, or for the number of days specified in said complaint, or at any other times, or for any number of days, the defendant occupied a berth at said wharf.

He further denies that the prices charged in said complaint are the usual and customary charges at said wharf, or that the defendant agreed to pay said charges, or any other charges whatever.

Demurrer to complaint.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER AMERICA.

Now comes the defendant, by J. B. Manchester, his attorney, and demurs to the plaintiff's complaint filed herein, on the ground that upon the face thereof it appears:

First. That this court has no jurisdiction of the defendant or of the subject matter of the action in manner and form as the same is instituted.

11 1. Because said court is deprived of such jurisdiction by the Constitution and laws of the United States.

2. Because the statute law of the State of California, under which this action is brought, is unconstitutional.

3. Because the board of State harbor commissioners have no authority given them by law to institute actions in rem, in the name of the people of the State of California.

4. Because the people of the State of California are not the owners of, nor have they any right, title, or interest in the Mission street wharf, in the city of San Francisco.

Second. That said complaint does not state facts sufficient to constitute a cause of action against the defendant, or to render defendant liable to said plaintiffs in this form of proceeding.

1, Because there is no allegation in said complaint that the board of State harbor commissioners are empowered by law to institute actions of this kind.

2. Because it does not appear from the allegations of said complaint that the owners, masters, agents, or consignees of said defendants, or either of them, made any contract, either expressed or implied, to pay the wharfage claimed to be due, in said complaint, from said defendant to said plaintiffs.

3. Because it does not appear from the allegations of said complaint that the owners, master, agents, or consignees of said defendant, or either of them, agreed to pay the wharfage claimed to

12 be due from the defendant to the plaintiffs in said complaint.

4. Because it does not appear from said complaint that any demand was ever made for the payment of said wharfage by said board of State harbor commissioners, or the owners, master, agents, or consignees of said defendant, or either of them, before said action was brought.

Third. That said complaint is ambiguous, unintelligible and uncertain.

J. B. MANCHESTER,
Attorney for Defendant.

Dated San Francisco, September 8th, 1866.

Indorsed: Service of a copy of the within demurrer is hereby admitted. Edward Tompkins, plaintiffs' attorney. San Francisco, September 8th, 1866.

Filed September 8th, 1866.

WM. LOEWY, *Clerk*,
Per JAS. E. ASHCOM, *D. C.*

13 In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco, August term, Saturday, Sept. 29th, 1866.

PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
STEAMER AMERICA, defendant.

Present: Hon. E. D. Sawyer, judge.

The demurrer to the complaint herein having been duly considered, it is ordered that said demurrer be, and the same is, hereby overruled, with leave to defendant to answer in ten days.

I hereby certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said Fourth District Court in the above-entitled cause.

Attest my band and the seal of said District Court, this twenty-first day of December, A. D. 1866.

[L. S.]

WM. LOEWY, *Clerk*,
By L. J. LEE, *Deputy Clerk*.

In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco.

14 *Answer.*

PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
STEAMER AMERICA, defendant.

I. W. Raymond, agent of said steamer, by J. B. Manchester, attorney for defendant for answer to the complaint filed in said cause, denies that said defendant is indebted to the plaintiff for wharfage of said defendant at Mission street wharf, or at any other wharf, in the sum of eighteen hundred and eighty six 50-100 dollars, as alleged in said complaint, or in any other sum, or for any interest on said sum, or on any other sum whatever.

He further denies that at the times, or for the number of days specified in said complaint, or at any other times, or for any number of days, the defendant occupied a berth at said wharf.

He further denies that the prices charged in said complaint are the usual and customary charges at said wharf, or that the defendant agreed to pay said charges, or any other charges whatever.

And for a further answer he denies each and every material allegation of said complaint.

15 Wherefore defendant demands judgment for his costs.

Dated San Francisco, October 8th, 1866.

J. B. MANCHESTER,
Attorney for Defendant.

Indorsed: Service of a copy of the within answer is hereby admitted. San Francisco, October 8th, 1866. Edward Tompkins for plaintiffs.

Filed October 8th, 1866.

WM. LOEWY, *Clerk*,
Per JAS. E. ASHCOM,
Deputy Clerk.

In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco.

Findings of court.

PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
STEAMER AMERICA, defendant.

This cause coming on to be heard by the court without a
16 jury, (a trial by jury having been duly waived,) and the pleadings, proofs and allegations having been heard and considered, the court now finds the following facts:

1. That the defendant was, at the commencement of this action, and yet is, justly indebted to the plaintiffs for the wharfage of the defendant, at the wharf of the plaintiffs, at the time and in the sums in the said complaint mentioned and set forth, and that there was due to the plaintiffs at the commencement of this action $1,886 50, and interest, as demanded in the complaint, in gold coin of the United States.

2. That the amount of interest due the plaintiffs to this day is $134 64, and that there is justly due the plaintiffs from the defendant, by reason of the premises, for principal and interest, the sum of $2,021 14 in gold coin.

As a conclusion of law, the court finds that the plaintiffs are entitled to judgment against the defendant for $2,021 14 and costs, such judgment to be payable in gold coin; and it is so ordered.

San Francisco, November 27th, 1866.

E. D. SAWYER,
District Judge.

Indorsed: Filed November 27th, 1866. Wm. Loewy, clerk, per Jas. E. Ashcom, deputy clerk.

17 In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
STEAMER AMERICA. } No. 13026.

This cause came on regularly for trial, Mr. Edward Tompkins appearing as counsel for the plaintiffs, and no one appearing for the defendant. A trial by jury having been duly waived, the cause was tried before the court sitting without a jury; whereupon plaintiffs' attorney, being duly sworn and examined, and the evidence being closed, the cause was submitted to the court for consideration and decision; and after due deliberation thereon, the court delivers its finding and decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the finding aforesaid, it is ordered, adjudged, and decreed that the people of the State of California, plaintiffs, do have and recover of and from the steamer America, defendant, in gold coin of the United States, the sum of two thousand and twenty-one dollars and fourteen cents, with interest thereon at the rate of ten per cent. per annum, from date thereof till paid, together with said plaintiffs' costs and disbursements incurred in this action, amounting to the sum of one hundred and eighteen dollars and fifty cents ($118 50.)

18 "Judgment" recorded December 21st, A. D. 1866.

Indorsed: Filed Dec. 21st, A. D. 1866. Wm. Loewy, clerk, by L. J. Lee, D. C.

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

Notice of Appeal.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
STEAMER AMERICA. }

To William Loewy, esq., clerk of said city and county:

SIR: Please take notice, that I. W. Raymond, agent for the defendant, appeals on behalf of said defendant from the judgment entered in said cause, in favor of the plaintiffs, to the Supreme Court of said State of California.

San Francisco, December 31st, 1866.

J. B. MANCHESTER,
Att'y for Defendant.

Indorsed: Filed Dec. 31st, 1866. Wm. Loewy, clerk, per L. J. Lee, D. C.

19 Service of a copy of the within notice of appeal is hereby admitted this thirty-first day of December, 1866, after filing.

EDWARD TOMPKINS,
Attorney for Plaintiffs.

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
STEAMER AMERICA.

I, Wm. Loewy, county clerk of the city and county of San Francisco, and ex-officio clerk of the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco, do hereby certify that the foregoing are full, true, and correct copies of original papers on file in my office, and of an original order entered on the minutes of said court, in the above entitled cause. That the same constitute the transcript on the appeal of said defendant to the Supreme Court of the State of California, from the judgment entered in said cause in favor of the plaintiffs.

And I further certify, that the undertaking on appeal, required by law, has been duly filed.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this twentieth day of March, A. D. 1867.

[SEAL.] WM. LOEWY, *Cl'k*,
Per JAS. E. ASHCOM,
Dep. Clerk.

20 *Assignment of error.*

The appellant assigns the following grounds of error, on which he will rely upon the appeal herein:

1. That the court erred in overruling the demurrer filed on the part of the defendant in said cause.
2. That the court should have sustained said demurrer.
3. The court erred in finding any sum due from the defendant to the plaintiffs in gold coin.
4. The court erred in ordering a judgment in said cause, payable in gold coin.
5. The court erred in ordering a judgment for the plaintiffs.
6. The court should have ordered a judgment for the defendant.

J. B. MANCHESTER,
Att'y for Appellant.

Service of a copy of the foregoing transcript and assignment of errors, is hereby admitted.

San Francisco, March 20th, 1867.

EDWARD TOMPKINS,
Att'y for Respondent.

21 *Opinion of the court.*

THE PEOPLE
vs.
THE STEAMER AMERICA. } No. 1294.

The complaint states that the defendant is indebted to the plaintiffs for the wharfage of the defendant at the wharf of the plaintiffs in the city of San Francisco, in a certain sum, and that such sum is by law payable in gold coin.

The defendant's counsel presents the point that the statute under which the action is brought (section 2 of the Water Front Act of 1864; Stats. 1863–4, p. 139) is unconstitutional. The ground taken, as we understand, is that this is a case of admiralty and maritime jurisdiction, and that "as the judiciary act of 1789, passed in pursuance of section 2 of article 3 of the Constitution of the United States, provides that the District Courts * * * shall have exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction," etc., the legislature of this State was without power to confer upon its own courts jurisdiction of such cases. Before this point can be reached it must be determined that this is a case of admiralty and maritime jurisdiction. It is said by Judge Conkling (1 Conkl. on Adm., 8) that "the admiralty jurisdiction, in cases of contract, depends primarily upon the nature of the contract, and is limited to contracts, claims and service purely maritime, and touching rights and duties appertaining to commerce and navigation." (See De Lovio vs. Boite, 2 Gall., 398; the Thomas Jefferson, 10 Wheat., 428; and other cases cited.) A cause of action, to be cognizable in admiralty, whether arising out of a contract, claim, service or obligation, or liability of any kind, must relate to the business of commerce and navigation.

The defendant's counsel, in stating the facts of the case, says that "the action is brought to recover wharfage while the steamer was engaged in navigating the high seas, and conveying passengers and freight to and from this port and ports in Central America." But it does not appear from the complaint that the steamer was engaged in commerce and navigation. This fact, or one of similar import, must be stated in the pleadings in order to make a case falling within the admiralty and maritime jurisdiction. The court cannot take judicial notice that a vessel found at a wharf is engaged in navigating the high seas, or the navigable inland waters of the State, or is employed in trade, commerce or navigation of any sort or in any manner. That is a fact of jurisdictional consequence, and must be expressly alleged, or necessarily inferable from the other facts alleged. The precedents of libels in admiralty, although "there is no special custom extant" with respect to their form, state this fact, and it is very generally found in all the reported cases. This fact not appearing in the case, the question presented by the defendant's counsel does not arise.

19 Service of a copy of the within notice of appeal is hereby admitted this thirty-first day of December, 1866, after filing.

EDWARD TOMPKINS,
Attorney for Plaintiffs.

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
STEAMER AMERICA.

I, Wm. Loewy, county clerk of the city and county of San Francisco, and ex-officio clerk of the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco, do hereby certify that the foregoing are full, true, and correct copies of original papers on file in my office, and of an original order entered on the minutes of said court, in the above entitled cause. That the same constitute the transcript on the appeal of said defendant to the Supreme Court of the State of California, from the judgment entered in said cause in favor of the plaintiffs.

And I further certify, that the undertaking on appeal, required by law, has been duly filed.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this twentieth day of March, A. D. 1867.

[SEAL.]

WM. LOEWY, *Cl'k*,
Per JAS. E. ASHCOM,
Dep. Clerk.

20 *Assignment of error.*

The appellant assigns the following grounds of error, on which he will rely upon the appeal herein:

1. That the court erred in overruling the demurrer filed on the part of the defendant in said cause.
2. That the court should have sustained said demurrer.
3. The court erred in finding any sum due from the defendant to the plaintiffs in gold coin.
4. The court erred in ordering a judgment in said cause, payable in gold coin.
5. The court erred in ordering a judgment for the plaintiffs.
6. The court should have ordered a judgment for the defendant.

J. B. MANCHESTER,
Att'y for Appellant.

Service of a copy of the foregoing transcript and assignment of errors, is hereby admitted.

San Francisco, March 20th, 1867.

EDWARD TOMPKINS,
Att'y for Respondent.

21 *Opinion of the court.*

THE PEOPLE
vs.
THE STEAMER AMERICA. } No. 1294.

The complaint states that the defendant is indebted to the plaintiffs for the wharfage of the defendant at the wharf of the plaintiffs in the city of San Francisco, in a certain sum, and that such sum is by law payable in gold coin.

The defendant's counsel presents the point that the statute under which the action is brought (section 2 of the Water Front Act of 1864; Stats. 1863–4, p. 139) is unconstitutional. The ground taken, as we understand, is that this is a case of admiralty and maritime jurisdiction, and that "as the judiciary act of 1789, passed in pursuance of section 2 of article 3 of the Constitution of the United States, provides that the District Courts * * * shall have exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction," etc., the legislature of this State was without power to confer upon its own courts jurisdiction of such cases. Before this point can be reached it must be determined that this is a case of admiralty and maritime jurisdiction. It is said by Judge Conkling (1 Conkl. on Adm., 8) that "the admiralty jurisdiction, in cases of contract, depends primarily upon the nature of the contract, and is limited to contracts, claims and service purely maritime, and touching rights and duties appertaining to commerce and navigation." (See De Lovio vs. Boite, 2 Gall., 398; the Thomas Jefferson, 10 Wheat., 428; and other cases cited.) A cause of action, to be cognizable in admiralty, whether arising out of a contract, claim, service or obligation, or liability of any kind, must relate to the business of commerce and navigation.

The defendant's counsel, in stating the facts of the case, says that "the action is brought to recover wharfage while the steamer was engaged in navigating the high seas, and conveying passengers and freight to and from this port and ports in Central America." But it does not appear from the complaint that the steamer was engaged in commerce and navigation. This fact, or one of similar import, must be stated in the pleadings in order to make a case falling within the admiralty and maritime jurisdiction. The court cannot take judicial notice that a vessel found at a wharf is engaged in navigating the high seas, or the navigable inland waters of the State, or is employed in trade, commerce or navigation of any sort or in any manner. That is a fact of jurisdictional consequence, and must be expressly alleged, or necessarily inferable from the other facts alleged. The precedents of libels in admiralty, although "there is no special custom extant" with respect to their form, state this fact, and it is very generally found in all the reported cases. This fact not appearing in the case, the question presented by the defendant's counsel does not arise.

It is objected that the harbor commissioners have no authority to institute actions in rem in the name of the people. Section 2 of the act of 1863–4 provides that "the said commissioners are hereby authorized and empowered, in the name of the people of the State of California, to institute actions at law and in equity for the possession of any wharf * * * * or for the recovery of the tolls, dockage, rents and wharfage thereof." The words are comprehensive enough to include all the remedies that a private person could have under the same circumstances, and there are no words in the act, and nothing in the nature of the cause of action, indicative of a restriction to certain remedies to the exclusion of others provided by law. We see no ground for holding that the Commissioners are not entitled to avail themselves of the remedy against the steamer, as provided by section 317 of the Practice Act. The proceeding is similar to that in the Hine vs. Trevor (4 Wal., 555,) which, it was said, was "a remedy partaking of all the essential features of an admiralty proceeding in rem. In that case one question was, whether the remedy adopted was one falling within the clause of the ninth section of the Judiciary Act of 1789, which "saves to suitors in all cases the right of a common law remedy." It was not held that the form of the remedy adopted would make a case within the admiralty jurisdiction; but the court, having determined from the facts of the case that it was one of admiralty cognizance, considered that the remedy was not within the saving clause of that section. In cases not within the jurisdiction of the admiralty courts, there can be no question that the legislature may devise or adopt any form of remedy. Had the plaintiffs desired a decision on the jurisdictional questions presented on the part of the defendant, the fact that the steamer was engaged in commerce and navigation, as stated in the brief for the defendant, would have been admitted by the plaintiffs; and had that fact appeared in the case or been admitted by counsel, there would have been no difficulty in determining whether the case was within the authority of the Hine vs. Trevor. To avoid misapprehension, we add that if the fact in question would bring a case, instituted by a private person, within the admiralty jurisdiction, it would not necessarily follow that the same result would isssue when the State is the plaintiff and the cause of action is of the nature of the one before us, as explained in the next point.

The third point is, that the court erred in ordering judgment in gold coin. It is provided by section 11 of the Water Front Act that "All tolls, dockage and wharfage charges, by this act authorized and required to be collected, shall be due and collectable exclusively in gold and silver money of the United States."

The case does not fall within the provisions of the specific contract act, as there was no contract in writing for the payment of the wharfage. The several sums required to be paid for dockage, wharfage, etc., are in the nature of public revenue. The funds are raised and appropriated by the government for the purpose of constructing wharves and other works for the protection and improvement of the harbor of San Francisco, and to aid and facilitate commercial inter-

course between this and other ports. The enterprise was set on foot for public benefit, and is one in which the public are interested, and was undertaken and carried on by the State in her sovereign capacity, and not as a mere private proprietor. The tolls, dockage and wharfage charges provided for in that section are levied under the same authority as license, poll and ad valorem taxes, and, in our opinion, they are charges upon the property to raise money for public purposes, within the principles laid down in Perry vs. Washburn (20 Cal., 350.)

The liability for the payment of such charges does not arise out of contract, or, if so in any manner, only in the remote degree that it does in case of license-taxes. They are dues to the public treasury, and, as such, it was competent to the legislature to make them payable in coin, or legal tender notes, or in money generally. (See State Treasurer vs. Collector Sangamon county, 28 Ill., 509.)

Judgment affirmed.

We concur:

RHODES, *J.*
SANDERSON, *J.*
SPRAGUE, *J.*
CROCKETT, *J.*
SAWYER, *C. J.*

22 In the Supreme Court of the State of California, January term, A. D. 1868.

Judgment.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER AMERICA.

On appeal from the District Court of the fourth judicial district in and for the city and county of San Francisco.

And now at this day, this cause being called and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood and fully considered, the opinion of the court herein is delivered by Rhodes J., full bench concurring to the effect that the judgment of the court below be affirmed. Whereupon it is now considered, ordered, adjudged and decreed by the court here that the judgement of the District Court of the fourth judicial district in and for the city and county of San Francisco, in the above-entitled cause, be and the same is hereby affirmed, with costs.

23 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER AMERICA.

I, George Seckel, clerk of the Supreme Court do hereby certify that the preceding and annexed contains a full, true and correct copy of the original record, opinion of the Supreme Court aforesaid, and the judgment thereon; also the original writ of error to the Supreme Court of the United States, copy thereof left for the defendant in error, and the original citation.

In witness whereof I have hereto set my hand and affixed the seal of the Suprem Court aforesaid this eighth day of June, A. D. 1868.

[SEAL]

GEO SECKEL, *Clerk*,
By WILLIAM G. WOOD,
D'y Cl'k.